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UNITED STATES PATENT AND TRADEMARK OFFICE
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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES
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Ex parte NEELAKANTAN SUNDARESAN
_____

Appeal 2008-005447
Application 09/672,304[1]
Technology Center 2100
_____

Decided: August 27, 2009
_____

Before LEE E. BARRETT, JOHN A. JEFFERY, and STEPHEN C. SIU,
Administrative Patent Judges.

BARRETT, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the final

rejection of claims 1-23. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

We reverse.

_____

[1] Filed September 29, 2000, titled "Method and System for
Selectively Accessing Files Accessible Through a Network." The real party
in interest is International Business Machines Corporation. Supplemental
Brief filed November 6, 2007 (Br.), 3.

STATEMENT OF THE CASE

The invention

   A conventional Internet search engine accesses websites on the network. The search engine downloads data from the website and archives selected downloaded data. One can use the search engine to search for a particular website containing desirable information by entering a query into the search engine. The search engine will search its archived data and return websites in its archived database which relate to the query. Spec. 3.

   The dynamic nature of the Internet results in websites being updated regularly. Consequently, data which was on the website when the search engine initially visited the website may no longer be there. Alternatively, the data may be outdated. Further, the website may no longer exist or its URL may have changed. As a result, data archived by the search engine could become invalid. In order for the search engine to be a useful tool, the search engine must periodically update its archived data. Spec. 3.

   A conventional search engine uses a web crawler (e.g., a "robot", "spider", "ant", etc.) to visit (i.e., access) a server on a network. The spider "crawls" from a homepage (i.e., the first or main webpage) of a website to the various subpages linked from the homepage. As the web crawler visits the various homepages with subpages, data on the pages are selectively archived by the search engine. Spec. 3.

   The typical crawlers visit web sites at regular intervals, for example, every 30 days. If a web crawler accesses a website which has not been updated since the last time the web crawler visited, the web crawler would

presume that the data previously archived is still valid. This may be erroneous. That is, one disadvantage with current web crawler technology is that the web crawler does not know when a website is scheduled to be updated. Depending on how often a website is updated, the web crawler's archived data could be very outdated by the time the web crawler returns. On the other hand, frequent web crawler visits to websites not frequently updated consume valuable computer resources. Spec. 3-4.

The invention provides a method and system for determining when and how often a web crawler should return to a website. Websites often contain Channel Definition Format (CDF) files which include data used by websites to specify how often and what parts of the site will be "pushed" (e.g. e-mailed) directly to a registered subscriber. A typical CDF file is an Extended mark-up language (XML) file containing various elements referred to as tags. The CHANNEL tag specifies the Universal Resource Locator (URL) on the website that corresponds to that CHANNEL. The SCHEDULE tag indicates when a channel should be updated. A channel may have a subchannel with information about when the page was last modified. Spec. 1-2.

The invention downloads the CDF file (the claimed "first file"), storing the CHANNEL (indicating the "second file") and SCHEDULE information. Next the invention uses the SCHEDULE information in the CHANNEL tag to decide when to visit the website next. Spec. 8.

The claims

Claim 1 is reproduced below:

1.   A method for searching files stored on a network, comprising:

downloading a first file on the network from a server to a client;

accessing time data from within the first file; and

setting an accessing time to access a second file on said server based on said time data from the first file, wherein said time data includes an actual time when said second file is scheduled to be updated.

The references

Yamane	6,167,436	Dec. 26, 2000
		(filed Aug. 5, 1997)
Ronning	US 2003/0212992 A1	Nov. 13, 2003
		(effective filing date Jan. 27, 2000)

The rejections

Claims 1-23 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Ronning and Yamane.

The rejection of claims 1-23 under 35 U.S.C. § 112 ¶ 1 as failing to comply with the written description requirement, although stated at page 3 of the Examiner's Answer, is apparently withdrawn as noted at page 14.

ISSUES

Appellant argues that the references do not teach or suggest the following limitations:

(1) "accessing time data from within the first file; and setting an accessing time to access a second file on said server based on said time data from the first file, wherein said time data includes an actual time when said second file is scheduled to be updated" (claims 1 and 17);

(2) "accessing time data from within said first file; and setting an accessing time to re-access the server based on said time data from the first file, wherein said time data includes an actual time when a second file is scheduled to be updated" (claim 7);

(3) "means for accessing time data from within the first file; and means for setting an accessing time to access a second file on said server based on said time data from the first file, wherein said time data includes an actual time when said second file is scheduled to be updated" (claim 23).

The limitations in claim 1 are representative of the rest of the claims. Accordingly, the issue is:

Has Appellant shown that the Examiner erred in concluding that the references teach or suggest "accessing time data from within the first file; and setting an accessing time to access a second file on said server based on said time data from the first file, wherein said time data includes an actual time when said second file is scheduled to be updated," as recited in representative claim 1?

PRINCIPLE OF LAW

Obviousness requires that the differences between the subject sought to be patented and the prior art are such that the subject matter as a whole would have been obvious to one of ordinary skill in the art. 35 U.S.C. § 103(a).

FACTS

Ronning

Ronning describe an agent software application for controlling distribution of files and managing updates to files. Abstract.

Figure 15 of Ronning shows a general settings screen 738. "Selection of a section 740 permits the user to instruct the agent to search for updates on a periodic basis. In particular, the user may enter a number of days in section 741 by which they want the agent to automatically search for update to the files on the user's machine . . . ." ¶ [0072].

Yamane

Yamane describes that network robots acquire data items dispersed over a network by referring to links. Col.1, ll. 11-13.

A problem with conventional network robots is that even where the contents of the data have not been updated, they may be still acquired, resulting in the execution of useless data acquisition. Col. 1, ll. 58-61.

One object of Yamane is to suppress unnecessary acquisition of un-updated data items. Col. 2, ll. 16-20.

Yamane uses an update time from an acquired file and an update history to predict the next update time so that the system will not acquire data before it is updated. "A first process is to extract the update time from the acquired data, a second process is to determine whether or not the acquired data has been updated, and a third process is to calculate the next update prediction time from the update history." Col. 6, ll. 36-40.

The first process is to determine whether information on the latest update time exists in the transferred data. Col. 6, ll. 48-50. The acquisition time, latest update time, and hash value from multiplying the acquired data by a hash function are stored in the update history table. Col. 7, ll. 10-15.

When information on the latest update time does not exist, the second process of determining whether the acquired data has been updated may be done by comparing a hash value of the acquired data to a hash value of the latest update time. Col. 6, l. 56 to col. 7, l. 9. The values are stored in the update history table. Col. 7, ll. 10-15.

The third process of calculating the next update predication time T from the update history involves calculating a "prediction update interval" by subtracting the next latest update time from the latest update time registered in the history table, and then calculating the "next update prediction time T" by adding the prediction update interval to the latest update time. Col. 8, ll. 1-22.

CONTENTIONS

The Examiner finds that Ronning describes accessing a first file on a network at paragraph [0035], and describes setting an access time to access a second file on a server at Figure 15, elements 740-743. Final Rej. 7. The Examiner finds that Ronning does not teach accessing time data from within the first file and the time data being an actual time for future updates. *Id.* The Examiner finds that "Yamane[] teaches a system where it predicts a future update including setting an actual time and date of when this update will occur (col. 4, line 63 - col. 5, line 3; Col. 5, Lines 48-58)." Ans. 8. The Examiner concludes that it would have been obvious to modify Ronning with the teachings of Yamane for the next prediction update to reduce traffic congestion by minimizing the number of times the agent has to search the server for updates. *Id.*

Appellant argues that all of the independent claims recite an actual time when a second file is <u>scheduled to be updated</u> and that this limitation is not taught or suggested in the references. Br. 11.

Appellant argues that the files downloaded by Yamane only include data on when a file was <u>last updated</u> and <u>do not include any schedule at all</u>. Reply Br. 5. It is noted that Yamane discloses trying to predict when files might be updated based only on data which is downloaded from the servers based upon time when these files have been updated in the past. *Id.* at 5-6.

ANALYSIS

We first deal with the Examiner's finding regarding Ronning.

The Examiner finds that Ronning teaches "setting an accessing time to access a second file on a server." Ans. 7. However, the full limitation requires "setting an accessing time to access a second file on said server based on said time data from the first file." Ronning sets the accessing time based on user input, not based on time data from the first file, so the Examiner's statement is not persuasive as to the actual claim limitation.

The Examiner also states that Ronning teaches that the user can set parameters related to control of file updates, including scheduling of downloads, and thus, "[t]echnically, Ronning along [sic, alone] teaches the limitation 'setting an accessing time to access a second file on a server based on time data that includes an actual time when the second file is scheduled to be updated' as claimed." *Id.* at 8. However, the Examiner fails to address that the "time data" is time data from the first file, "wherein said time data includes an actual time when said second file is scheduled to be updated." We agree with Appellant that, "[t]he system that is disclosed by the Ronning et al. reference <u>does not</u> teach or suggest <u>downloading a file from a server which includes a scheduled update time</u>." Reply Br. 8. Therefore, Ronning is not of any use to the disputed limitations.

Next we look at Yamane.

Appellant argues that "like the Ronning et al. reference, the Yamane et al. reference <u>does not</u> teach or suggest <u>downloading a first file from a server that includes an actual time when the second file is scheduled to be</u>

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updated." Reply Br. 8. We agree. Yamane describes that the time data within the first file is the "latest update time," col. 6, ll. 35-47, and is <u>not</u> "an actual time when said second file is scheduled to be updated" as claimed. Yamane describes that the "latest update time" is used together with previously stored "latest update times" to calculate a "prediction update interval" which is added to the latest update time to calculate a "next update prediction time T." As noted by Appellant, the update time in Yamane is generated locally, not downloaded. Reply Br. 9. Manifestly, the claimed invention does not require "predicting" or "calculating" a next update time because "an actual time when said second file is scheduled to be updated" is part of the time data from the first file.

The point of contention in the rejection appears to be the Examiner's interpretation that the calculated <u>predicted</u> "time when said second file is scheduled to be updated" in Yamane meets the claimed "actual time when said second file is scheduled to be updated" limitation. We understand that a "predicted time" is an "actual time" in the sense that it is real. However, considering the limitation as a whole, it is clear that a "predicted time when said second file is scheduled to be updated" is not the same as an "actual time when said second file is scheduled to be updated." There is a difference between predicting that a file will be updated in one week and knowing for certain that the file is scheduled to be updated in one week: a predicted time may not, and probably will not be the actual time.

Moreover, the Examiner's interpretation does not account for the fact that the limitation of "setting an accessing time to access a second file on

said server based on said time data from the first file, wherein said time data includes an actual time when said second file is scheduled to be updated" requires that "said time data [from the first file] includes actual time when said second file is scheduled to be updated." We have noted that the time data in Yamane is the "latest update time" and <u>not</u> "an actual time when said second file is scheduled to be updated" as claimed. These points have been extensively argued by Appellant in the main Brief and the Reply Brief.

We are persuaded by Appellant's arguments that the Examiner erred.

CONCLUSION

We are persuaded by Appellant's arguments that the Examiner erred in concluding that the references teach or suggest "accessing time data from within the first file; and setting an accessing time to access a second file on said server based on said time data from the first file, wherein said time data includes an actual time when said second file is scheduled to be updated," as recited in representative claim 1. The rejection of claims 1-23 is reversed.

<u>REVERSED</u>

rwk

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